



State Water Resources Control Board

NO. WQ 2022-0040-DWQ CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

Effective Date: July 25, 2022

Expiration Date: July 25, 2027

Program Type: Fill/Excavation

Project Type: Roads and Highways

Project: State Route 91 Improvement Project between State Route 57 and State Route 55 (OCTA M2 "Project I"), Segment 1 (Project)

Applicant: California Department of Transportation, District 12

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I. Summary

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) is issued at the request of California Department of Transportation, District 12 (hereinafter Permittee) for the Project. This Order is for the purpose described in application and supplemental information submitted by the Permittee. The application was received on April 20, 2022. The application was deemed complete on June 24, 2022. Prior to receiving a complete application, Water Board staff issued a notice of incomplete application and the Permittee responded to the request for application information on the following date(s):

Date of Notice of Incomplete Application: **June 8, 2022**
Date all requested information was received: **June 17, 2022**

The Applicant submitted a certification request as defined by 40 CFR section 121.5 concurrently to the Water Board and the U.S. Army Corps of Engineers (Corps) on April 20, 2022. In response to the certification request, the Corps provided a reasonable period of time as defined by 40 CFR 121.6 for the Water Board to act on the request by July 25, 2022.

II. Findings

1. This Order is adopted pursuant to section 401 of the Clean Water Act and the California Porter-Cologne Water Quality Control Act (Cal. Water Code § § 13000, et seq.). Notwithstanding any determinations made by the U.S. Army Corps or other federal agency, dischargers must comply with the entirety of this Order because the Order also serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ. Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264.
2. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.
3. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law.
4. In response to a suspected violation of any condition of this Order, the Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards deem appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.

5. This Order and all conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project.
6. This Order does not provide coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002) (Construction General Permit).
7. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Wildlife Code, sections 2050-2097) or the federal Endangered Species Act (16 U.S.C. sections 1531-1544). If a "take" will result from any act authorized under this Order held by the Permittee, the Permittee must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Permittee is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
8. This Order includes monitoring and reporting requirements pursuant to Water Code section 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this Order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

III. Project Purpose

The primary goal of the proposed Project is to improve traffic operations on State Route 91 (SR-91) between Acacia Street (west of SR-57) and just east of Lakeview Avenue (east of SR-55).

IV. Project Description

Project improvements include constructing a new drop ramp (southbound SR-55 on-ramp) directly from Lakeview Avenue to the SR-55 connector and relocating the SR-91/SR-55 diverge lane east of Lakeview Avenue. Additionally, the Project would combine the Lakeview Avenue westbound loop and slip on-ramps as a single tight diamond on-ramp to SR-91. Lakeview Avenue between Santa Ana Canyon Road and Riverdale Avenue would also be reconstructed along with replacement of the Lakeview Avenue overcrossing structure near latitude and longitude: 33.851168, - 117.814611.

V. Project Location

County: Orange

Section 3, 4, and 9, Township 9W, Range 4S

Latitude: 33.851168 and Longitude: -117.814611

The linear transportation Project is along a section of State Route 91 (SR-91) primarily in the westbound direction from just east of the SR-91/State Route 55 (SR-55) Interchange (Post Mile R9.2) to east of the Lakeview Avenue/SR-91 Interchange (Post Mile R11.4) in the city of Anaheim, Orange County, California. Most of the proposed activity will take place in the Lakeview Avenue/SR-91 Interchange. Maps showing the Project location are found in Attachment A of this Order.

VI. Project Impact and Receiving Waters Information

The Project is located within the jurisdiction of the Santa Ana Regional Water Quality Control Board. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the applicable water quality control plans (Basin Plan). The plan for the region and other plans and policies may be accessed at the [State Water Resources Control Board's Plans and Policies Web page](http://www.waterboards.ca.gov/plans_policies/) (http://www.waterboards.ca.gov/plans_policies/). The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies.

Project impact and receiving waters information can be found in Attachment B. Table 1 of Attachment B shows the receiving waters and beneficial uses of waters of the state impacted by the Project. Individual impact location and quantity is shown in Table 2 of Attachment B.

VII. Description of Direct Impacts to Waters of the State

The proposed project would result in temporary impacts to 0.11 acre of non-wetland waters of the state and permanent impacts to less than 0.01 acre of wetlands and 0.01 acre of non-wetland waters of the state.

The project will result in temporary impacts to 0.07 acre of delineated 1602 jurisdictional streambed resource and no permanent 1602 jurisdictional impacts (Feature I-11 is the only 1602 jurisdictional resource delineated within Segment 1 that would be subject to project-related impacts). The impacts associated with each of the four drainage features are detailed below.

Drainage Feature I-11:

The proposed widening of the Lakeview Avenue WB on-ramp will result in 0.07 acre of temporary impacts to non-wetland waters of the state corresponding to this existing concrete box channel. A large portion of the channel will be removed and replaced with a storm drainpipe to be installed under the roadway shoulder. The proposed storm drain will discharge to the existing channel at the west end of the Segment 1 project limits.

Drainage Feature I-12:

The proposed widening of the Lakeview Avenue WB on-ramp will result in 0.02 acre of temporary impacts to non-wetland waters of the state corresponding to this existing concrete trapezoidal channel. The channel will be completely removed and replaced with a storm drainpipe that will be installed under the roadway shoulder. Stormwater captured from the freeway will be conveyed to the existing 24-inch reinforced concrete pipe adjacent to the proposed Lakeview Avenue WB on-ramp.

Drainage Feature I-13:

This existing earthen ditch will be impacted by the proposed roadway widening. The existing flared end section of the ditch will be removed, and the storm drain will be extended to a proposed drainage structure. Portions of the ditch will be covered with fill material to accommodate the proposed Lakeview Avenue WB on-ramp and embankment. This will result in 0.014 acre of permanent impacts to this earthen drainage ditch, of which 0.012 acre is non-wetland waters of the state and 0.002 acre is wetland waters of the state.

Drainage Feature I-14:

The existing, partially earthen, and partially asphalt ditches will be impacted and covered with fill material to accommodate the proposed improvements to the Lakeview Avenue WB off-ramp and embankment. This will result in 0.003 acre of permanent impacts to the earthen portion of this feature, of which 0.001 acre is wetlands and 0.002 acre is non-wetland waters of the state and 0.02 acre of temporary impacts to the asphalt portion of Drainage Feature I-14 that constitute non-wetland waters of the state.

Existing stormwater flows will be captured by catch basins north on Lakeview Avenue and discharged into a proposed infiltration basin, which will be located generally where the existing drainage feature exists within the current configuration of the Lakeview Avenue WB loop ramp.

Total Project fill/excavation quantities for all impacts are summarized in Tables 1-2. Permanent impacts are categorized as those resulting in a physical loss in area and also those degrading ecological condition.

Table 1: Total Project Fill/Excavation Quantity for Temporary Impacts¹

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Stream Channel	0.110		2,950

Table 2: Total Project Fill/Excavation Quantity for Permanent Physical Loss of Area Impacts

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Stream Channel	0.010		291
Wetland	<0.010		75

VIII. Description of Indirect Impacts to Waters of the State

The Water Board recognizes the potential for indirect impacts to waters of the state associated with the Project. Pollutants that can have a detrimental effect on water quality during construction include sediments, metals, trash, petroleum products, concrete waste (dry and wet), sanitary waste, and chemicals. The proposed project involves grading and earth-moving activities, both of which expose soil and, therefore, increase potential for soil erosion compared to existing conditions. In addition, during a storm event, soil erosion could occur at an accelerated rate. Grading and earth-moving equipment would also be a source of chemical, liquid, and petroleum products (such as paints, solvents, and fuels) if the equipment leaks. Concrete-related waste may be spilled or leaked on the project site. Therefore, grading and earth-moving activities for the proposed project have the potential to transport chemical and concrete-related waste via storm runoff into receiving waters. Temporary or portable sanitary facilities provided for construction workers would be a source of sanitary waste that could be transported to downstream receiving waters. Construction workers would also generate trash and debris (i.e., food wrappers and construction waste) that could also be transported to receiving waters.

Under the Construction General Permit, a Stormwater Pollution Prevention Plan (SWPPP) would need to be prepared and the construction best management practices (BMPs) detailed in the SWPPP implemented during construction to minimize erosion and prevent spills. Construction BMPs to be documented in the SWPPP would include, at a minimum, soil stabilization, sediment control, wind erosion control, stormwater and non-stormwater treatment BMPs, and waste management and materials pollution controls. When construction BMPs are properly designed, implemented, and maintained, the pollutants of concern would be retained on the project site to prevent the pollutants from reaching the receiving waters.

¹ Includes only temporary direct impacts to waters of the state and does not include area of temporary disturbance which could result in a discharge to waters of the state. Temporary impacts, by definition, are restored to pre-project conditions and therefore do not include a physical loss of area or degradation of ecological condition.

Because the construction BMPs would be designed to retain sediment and other pollutants on the project site so they would not reach receiving waters, stormwater discharges and authorized non-stormwater discharges are not anticipated to cause or contribute to any violations of applicable water quality standards or objectives, or adversely impact human health or the environment.

IX. Avoidance and Mitigation

The Project qualified as a tier 2 project and the Project is the least environmentally damaging practicable alternative (State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, section IV.A.1.h).

A. Direct Impact Avoidance and Minimization:

Avoidance and minimization measures **BIO-1** through **BIO-10**, and **BIO-18**, as described in Section 2.3.2, *Wetlands and Other Waters* of the IS/MND, would reduce the extent of temporary and permanent impacts on jurisdictional features resulting from construction. In addition, impacts on waters of the U.S., including wetlands and non-wetland waters, would be permitted under Clean Water Act (CWA) Section 404 with a Letter of Permission through the Measure M2 Freeway Program's Standard Individual Permit and under CWA Section 401 with water quality certification through the State Water Resources Control Board. Under the preapproved mitigation program in the OCTA M2 NCCP/HCP, permanent project-related impacts on waters of the U.S. and waters of the state would be mitigated through restoration and monitoring in Aliso Creek. Under the terms of the agreement, the mitigation sites would need to be prepared and planted and restoration monitoring would need to commence before any fill material could be discharged into waters of the U.S.

The following measures will be implemented to avoid and/or minimize potential direct impacts to biological resources in Segment 1 as a result of the proposed project construction work:

- The project will return any landscaping within Caltrans right-of-way that is temporarily disturbed or removed during construction to pre-project or better conditions.
- To the extent possible, minimize existing tree and vegetation disturbance within the Project right-of-way.
- Prior to clearing or construction, highly visible barriers (such as orange construction fencing) will be installed around areas adjacent to the project footprint to designate the environmentally sensitive areas (ESAs) to be protected. No project activity of any type will be permitted within these ESAs. In addition, heavy equipment, including motor vehicles, will not be allowed to operate within the ESAs. All construction equipment will be operated in a manner that prevents accidental damage to the ESAs. No structure of any kind, or incidental storage of equipment or supplies, will be allowed within these protected zones. Silt fence barriers will be installed at the ESA boundary to prevent accidental deposition of fill material in areas where vegetation is immediately adjacent to planned grading activities.

- The areas of disturbance and constructed slopes will be protected with temporary and/or permanent erosion controls, including fiber rolls, silt fencing, soil binders, rock slope protection, and/or revegetation with an erosion control seed mix.
- When in or near natural habitat areas, all personnel involved in on-site project construction will be required to participate in a preconstruction training program to understand the avoidance and minimization obligations of the project.
- Construction activities in special aquatic resources will be restricted to the dry season (June 1 through October 15) when possible. However, open or flowing water may be present during construction. If construction occurs where there is open or flowing water, a strategy that is approved by the resource agencies (e.g., USACE, CDFW, and State Water Resources Control Board), such as the installation of diversions or cofferdams, will be used to dewater or divert water from the work area. If cofferdams are constructed, implementation of the following cofferdam or water diversion measures is recommended to avoid and lessen aquatic resources impacts during construction:
 - a) Cofferdams, filter fabric, and corrugated steel pipe are to be removed from the creek bed after completion of the project.
 - b) The timing of work within all channelized waters is to be coordinated with the regulatory agencies.
 - c) The cofferdam is to be placed upstream of the work area to direct base flows through an appropriately sized diversion pipe or side channel. The diversion pipe or channel will extend through the work area, where possible, or to the side of the work area and outlet through a sandbag dam at the downstream end.
- Construction equipment will be cleaned of mud or other debris that may contain invasive plants and/or seeds and inspected to reduce the potential for spreading noxious weeds before mobilizing to the site and before leaving the site during the course of construction.
- Invasive species will be removed from the project work area and controlled during construction. The use of known invasive plant species (i.e., plant species listed in California Invasive Plant Council's [Cal-IPC's] California Invasive Plant Inventory with a High or Moderate rating) will be prohibited for construction, revegetation, and landscaping activities. [ECR: BIO-18]
- A Nesting Bird Management Plan (NBMP) will be written for this project that would take into account the various nesting conditions throughout the Biological Study Area (BSA), including nesting conditions and possible nesting locations to monitor for species that may require specialized habitat such as raptors and corvids, colonial nesting birds, crevice- and cavity-nesting birds, and waterbirds, as appropriate. This would provide a comprehensive approach to handling nesting birds prior to the commencement of construction. The NBMP will implement requirements of the Bat Management Plan as appropriate and will require that all areas proposed for vegetation removal or

disturbance of potential nesting habitat be cleared beforehand by both bird and bat biologists. Because bats may use remnant nests for wintering roosts, nests must not be removed before being examined and approved for removal by the bat biologist. Nest removal and exclusion device installation will be monitored by a qualified avian biologist and the bat biologist. All nest exclusion techniques would be coordinated between Caltrans and resource agencies, as applicable.

B. Indirect Impact Avoidance and Minimization:

The following avoidance and/or minimization measures are applicable to Segment 1 and were extracted from the Environmental Commitment Record (ECR) (Appendix D) of the Initial Study with Mitigated Negative Declaration/Environmental Assessment with Finding of No Significant Impact (2020). The following BMP measures will be implemented to avoid, minimize, and/or control pollutants and project materials (e.g., sediment) from being conveyed to downstream receiving waters to the maximum extent feasible:

- The proposed project will comply with the provisions of the Caltrans NPDES Statewide Storm Water Permit (Order No. 2012-0011-DWQ, as amended by Order WQ 2014-0006-EXEC, Order WQ 2014-0077-DWQ, and Order WQ 2015-0036-EXEC, NPDES No. CAS000003) and the NPDES General Permit for Storm Water Discharges of Stormwater Runoff Associated with Construction Activities (Order No. 2009-0009-DWQ, as amended by 2012-0006- DWQ), and any subsequent permit in effect at the time of construction.
- A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared and implemented to address all construction-related activities, equipment, and materials that have the potential to impact water quality. The SWPPP shall identify the sources of pollutants that may affect the quality of stormwater and include the construction site BMPs to control pollutants such as sediment control, catch basin inlet protection, construction materials management, and non-stormwater BMPs. Additional BMP reference material is contained within the Caltrans Project Planning and Design Guide (2016) and Caltrans Construction Manual (2017). These include, but are not limited to, temporary sediment control, temporary soil stabilization, scheduling, waste management, materials handling, and other non-stormwater BMPs.
- Design pollution prevention BMPs will be implemented, such as preservation of existing vegetation and slope/surface protection systems (benching/terracing, slope rounding, reducing gradients [incorporate 4:1 slopes or flatter]).
- Caltrans-approved treatment BMPs will be implemented consistent with the requirements of NPDES Permit and Waste Discharge Requirements for the State of California, Department of Transportation, Order No. 2012-0011-DWQ, NPDES No. CAS000003, and any subsequent permits in effect at the time of construction. Treatment BMPs may include design pollution prevention infiltration areas, infiltration devices, biofiltration strips and swales, detention devices, media filters, multi-chamber treatment train, wet basin, open graded friction course, and pervious pavement.

- All equipment will be adequately maintained to prevent oil, fuel, or other hydraulic fluids from leaking into the river or other areas where it could accidentally contaminate waterways. Heavy equipment will be examined for leaks each day before work begins; in case of a leak, use of the equipment will not be allowed until the leak is fixed. All equipment maintenance, staging, and dispensing of fuel, oil, coolant, or any other toxic substances will occur in a Caltrans biologist-approved storing and staging area.

X. Compensatory Mitigation

All permanent impacts are mitigated as part of the agency pre-approved mitigation in Aliso Creek. Under the preapproved mitigation program in the OCTA M2 Natural Community Conservation Plan/Habitat Conservation Plan, permanent project-related impacts to 0.003 acre of wetlands and 0.014 acre of non-wetland waters of the state (i.e., 0.017-acre total) for this project would be mitigated through restoration and monitoring in Aliso Creek. Under the terms of the agreement, the mitigation sites would need to be prepared and planted and restoration monitoring would need to commence before any fill material could be discharged into water of the state.

XI. Conditions

Specific condition justifications required by Title 40, Code of Federal Regulations (CFR) Part 121.7(d)(1) are provided below each condition, or set of conditions, in italic text.

These conditions included herein are generally required to comply with the state's Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that any "activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained." All Regional Board Water Quality Control Plans incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR Part 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." According to U.S. EPA, dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA's section 404(b)(1) Guidelines. The State Water Boards adopted a modified version of U.S. EPA's section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines).

The Water Board has independently reviewed the record of the Project to analyze impacts to the environment and designated beneficial uses within the watershed of the Project. This Order provides reasonable assurance that the Project authorized under this Order will comply with state and federally approved water quality requirements, provided that the following conditions are adhered to:

A. Impacts to Waters of the State

Impacts to waters of the state shall not exceed quantities shown in Tables 1-2.

This condition protects water quality by ensuring that the impacts to waters are not greater than what is proposed in the application. Larger impacts lead to a greater potential for adverse impacts on water quality. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

B. Reporting and Notification Requirements

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment D, including specifications for photo and map documentation during the Project. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment D, which must be signed by the Permittee or an authorized representative.

1. Project Reporting

- a. **Monthly Reporting:** The Permittee must submit a Monthly Report to the State Water Board every month after the effective date of this Order. Monthly reports shall be submitted by the 15th day of the month following the reporting month (e.g., January report must be submitted by February 15th). Monthly reporting shall continue until the State Water Board issues a Notice of Project Complete Letter to the Permittee.
- b. **Annual Reporting:** The Permittee shall submit an Annual Report each year on the anniversary of the effective date of this Order. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the Permittee.

These conditions are required because if the Project is not implemented as approved in this Order, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

2. Project Status Notifications

- a. **Commencement of Construction:** The Permittee shall submit a Commencement of Construction Report at least seven (7) days prior to start of initial ground disturbance activities.
- b. **Request for Notice of Project Complete Letter:** The Permittee shall submit a Request for Notice of Project Complete Letter when construction and/or any post-construction monitoring is complete, and no further Project activities will occur. This request shall be submitted to Water Board staff within thirty (30) days following completion of all Project activities. Upon approval of the request, the Water Board staff shall issue a Notice of Project Complete Letter to the Permittee which will end the post discharge monitoring period and associated annual fees. Completion of post-construction monitoring shall be determined by Water Board staff and shall be contingent on successful attainment of restoration and mitigation performance criteria.

3. Conditional Notifications and Reports:

The following notifications and reports are required as appropriate.

a. Accidental Discharges of Hazardous Materials²

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Water Code, Section 13271):

- i. As soon as (A) Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures then:
 - a. First call – 911 (to notify local response agency)
 - b. Then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
 - c. Lastly, follow the required OES procedures as set forth in the [Office of Emergency Services' Accidental Discharge Notification Web Page](https://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf) (https://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf)
- ii. Following notification to OES, the Permittee shall notify Water Board, as soon as practicable (ideally within 24 hours). Notification may be delivered via written notice, email, or other verifiable means.
- iii. Within five (5) working days of notification to the Water Board, the Permittee must submit an Accidental Discharge of Hazardous Material Report.

b. Violation of Compliance with Water Quality Standards:

- i. The Permittee shall notify the Water Board of any event causing a violation of compliance with water quality standards. Notification may be delivered via written notice, email, or other verifiable means.
- ii. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.

² "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Safety Code, Section 25501.)

These conditions for a and b protect water quality by alerting the Water Boards to events that cause violations of water quality standards. Being aware of such events allows the water board to assess the cause of the issue and require remediation if necessary. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

c. In-Water Work and Diversions:

- i. The proposed Segment 1 project shall not include any work in standing or flowing water.
- ii. The Permittee shall notify the Water Board at least forty-eight (48) hours prior to initiating work in water or stream diversions. Notification may be delivered via written notice, email, or other verifiable means.
- iii. Within three (3) working days following completion of work in water or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to Water Board staff.

These conditions in c protect water quality by alerting the Water Boards when in water work and/or stream diversions will be taking place and requiring the Permittee to monitor water quality while those activities are taking place. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

d. Modifications to Project

Project modifications may require an amendment of this Order. The Permittee shall give advance notice to Water Board staff if Project implementation as described in the application materials is altered in any way or by the imposition of subsequent permit conditions by any local, state or federal regulatory authority by submitting a Modifications to Project Report. The Permittee shall inform Water Board staff of any Project modifications that will interfere with the Permittee's compliance with this Order. Notification may be made in accordance with conditions in the certification deviation section of this Order.

This condition is required because if the Project is not implemented as approved in this Order, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

e. Transfer of Property Ownership:

This Order is not transferable in its entirety or in part to any person or organization except after notice to the Water Board in accordance with the following terms:

- i. The Permittee must notify the Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Permittee and purchaser must sign and date the notification and provide such notification to the Water Board at least 10 days prior to the transfer of ownership. The purchaser must also

submit a written request to the Water Board to be named as the permittee in a revised order.

- ii. Until such time as this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order.

This condition protects water quality by ensuring that the Permittee and any future legally responsible party has implemented the Project as proposed and approved, that temporary impact sites have been restored, and the Project area is stable. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

f. Transfer of Long-Term BMP Maintenance:

If maintenance responsibility for post-construction BMPs is legally transferred, the Permittee must submit to the Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer or designer specifications. The Permittee must provide such notification to the Water Board with a Transfer of Long-Term BMP Maintenance Report at least 10 days prior to the transfer of BMP maintenance responsibility.

This condition protects water quality by ensuring that the Permittee and any future legally responsible party has implemented the Project as proposed and approved, that temporary impact sites have been restored, and the Project area is stable. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

C. Water Quality Monitoring

1. General:

If surface water is present, continuous visual monitoring shall be conducted during active construction periods to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or uncured concrete).

This condition protects water quality by requiring the Permittee to visually monitor for obvious signs of water quality degradation. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383. The anticipated costs are minimal as the reporting obligations require only visual monitoring.

2. Accidental Discharges/Noncompliance:

Upon occurrence of an accidental discharge, the Permittee shall determine whether the discharge includes hazardous materials or will cause or contribute to an exceedance of water quality objectives, and if so, notify the Water Board in accordance with XI.B.3. Water Board staff may require additional water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

This notification ensures that corrective actions required to minimize the impact or clean up such discharges can be taken as soon as possible. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

3. Post-Construction:

Visually inspect the Project site during the rainy season for to ensure excessive erosion, stream instability, or other water quality pollution is not occurring in or downstream of the Project site. If water quality pollution is occurring, contact the Water Board staff member overseeing the Project within three (3) working days. The Water Board may require the submission of a Violation of Compliance with Water Quality Standards Report. Additional permits may be required to carry out any necessary site remediation.

This condition protects water quality by ensuring that the Permittee has implemented the Project as proposed and approved, that temporary impact sites have been restored, and the Project area is stable. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

D. General Conditions

Each standard condition in Section XI.D is required to be included in all water quality certifications by California Code of Regulations, title 23, Chapter 28, Section 3860. These conditions are necessary to assure that any discharge authorized under the Order will comply with water quality requirements.

1. This action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330, and California Code of Regulations, Title 23, chapter 28, Article 6 commencing with section 3867.
2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, Title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations.

E. General Compliance

1. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Regional Water Board or any

applicable Water Board (collectively Water Boards) water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.

This condition protects water quality by stating that the Project must not violate water quality standards or impair beneficial uses. (State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Dredge or Fill Procedures), Section IV.B.1. See Resolution 2021-0012 and 2019-0015).

2. The Project must conform to the engineering plans, specifications, and technical reports submitted with the application materials. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

This condition protects water quality by ensuring that the Project is implemented as proposed and approved. (Wat. Code, § 13264.) Deviations from the approved plans and practices could result in adverse impacts to water quality.

3. The Permittee shall adhere to all requirements in the mitigation monitoring and reporting program (MMRP) which is incorporated herein by reference and any additional measures as outlined in Attachment C, CEQA Findings of Fact.

This condition protects water quality by requiring that the Permittee ensure that grantees implementing the individual projects adhere to the mitigation measures in the Project's MMRP. These mitigation measures are designed in part to protect water quality and beneficial uses. (Cal. Code of Regs., tit. 14, § 15097.)

F. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment E of this Order.

This condition is authorized by Water Code sections 13383 and 13267, which requires any person discharging waste that could affect the quality of waters to provide to the Water Boards, under penalty of perjury, any technical or monitoring program reports as required by the Water Boards. The signatory requirements are consistent with 40 C.F.R. section 122.22.

2. Site Access: The Permittee shall grant Water Board staff, Santa Ana Regional Water Quality Control Board (collectively Regional Water Boards) staff or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
 - a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
 - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.

- c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
- d. Sample or monitor for the purposes of assuring Order compliance.

These conditions protect water quality by allowing the Water Boards, or a representative, to investigate site conditions to ensure that the Project is compliant with this Order. These conditions are authorized pursuant to the Water Boards' authority to investigate the quality of any waters of the state within its region under Water Code sections 13267 and 13383.

3. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on this Project. Copies of this Order shall remain at the Project site for the duration of this Order. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

This condition requires site personnel and agencies to be familiar with the content of the Order and mandate availability of the document at the project site. This condition is required to assure that any authorized discharge will comply with the terms and conditions of the Order. (Wat. Code, § 13263.)

4. Lake and Streambed Alteration Agreement: If issued, the Permittee shall submit a signed copy of the California Department of Fish and Wildlife's Lake and Streambed Alteration Agreement to the Water Board prior to any discharge to waters of the state.

This condition is required pursuant to California Code of Regulations section 3856(e), which requires that copies be provided to the Water Boards of "any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included."

G. Construction Conditions

1. Dewatering

- a. All temporary dewatering/diversion methods shall be designed to isolate the immediate work area and to have the minimum necessary impacts to waters of the state.

This condition protects water quality by requiring the Permittee to minimize the Project's footprint in waters. (Dredge or Fill Procedures, Section IV.B.1.)

- b. All dewatering/diversion facilities shall be installed such that natural flow is maintained upstream and downstream of Project areas.

This condition protects water quality by requiring Permittee to maintain streamflow upstream and downstream of the Project area while diversions are in place. Stream flow is important for maintaining beneficial uses and water quality parameters such as dissolved oxygen and temperature. (Dredge or Fill Procedures, Section IV.B.1.)

- c. Any temporary dams or diversions shall be installed such that the dewatering/diversion does not cause sedimentation, siltation, or erosion upstream or downstream of Project areas.

This condition protects water quality by requiring that diversions do not affect flow velocity or rate and do not affect natural sediment transport functions of streams. Sedimentation or erosion related to diversions could cause long term instability of the Project reach and lead to short- and long-term impacts to water quality and beneficial uses. (Dredge or Fill Procedures, Section IV.B.1.)

- d. All dewatering/diversion methods shall be removed as soon as practicable upon completion of dewatering/diversion activities.

This condition protects water quality by requiring the Permittee to remove dewatering/diversion equipment and structures as soon as practicable after they are no longer needed. The longer that diversions and dewatering equipment are in place, the greater the potential for them to fail, be overwhelmed, or otherwise cause water quality degradation. (Dredge or Fill Procedures, Section IV.B.1.)

- e. In the event of rain, any in-water work area shall be temporarily stabilized before stream flow overtops or overwhelms the diversion structure. The stream bed shall be stabilized so that the disturbed areas will not encounter stream flow.

This condition protects water quality by requiring the Permittee to stabilize the streambed behind diversions before they are overwhelmed. If stream flow is allowed over exposed and non-stabilized work areas, this would lead to erosion of the site, downstream sedimentation, and long-term instability of the project reach that could lead to further degradation of water quality and beneficial uses. (Dredge or Fill Procedures, Section IV.B.1.)

- f. The Permittee shall not use or allow the use of erosion control products that contain synthetic materials within waters of the state at any time, except for plastic sheeting used in water diversion and dewatering activities. The Permittee shall first request approval from the State Water Board if an exception from this requirement is needed for a specific location.

This condition protects water quality by limiting the use of synthetic materials. Synthetic, non-biodegradable materials used in erosion control products are persistent in the environment. When they do break down, they break down into smaller and smaller pieces of the original material, which can have adverse effects on water chemistry and fauna. Synthetics should be avoided wherever

*possible due to their potential effects on water quality and the environment.
(Dredge or Fill Procedures, Section IV.B.1.)*

- g. All work performed within waters of the state shall be completed in a manner that minimizes impacts to beneficial uses.

This condition protects water quality by requiring the Permittee to minimize impacts to beneficial uses of waters of the state. (Dredge or Fill Procedures, Section IV.B.1.)

2. Dust Abatement:

Dust abatement chemicals added to water can be hazardous to wildlife and, if allowed to enter streams, detrimental to water quality. Therefore, dust abatement activities shall be conducted so that sediment or dust abatement chemicals are not discharged into waters of the state. Dust abatement products or additives that are known to be detrimental to water quality or wildlife shall not be used, unless specific management needs are documented, and product-specific application plans are approved by Water Board staff.

This condition protects water quality by ensuring that the Permittee does not discharge sediment or other wastes into waters while performing dust suppression activities. (Dredge or Fill Procedures, Section IV.B.1.)

3. Site Management

- a. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation.

Removal of vegetation within and adjacent to waters results in higher water quality degradation through erosion, decreased shading, decreased riparian buffering, decreased allochthonous nutrient and habitat inputs, and other pathways. Limiting this vegetation removal to the minimum necessary to complete the Project is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

- b. Where temporary or permanent impacts have not been approved, construction vehicles must not enter waters of the state.

Vehicles operating within waters that are outside of the approved Project boundary will lead to water quality impacts that were not proposed and which are not authorized by this Order. Water quality is protected by restricting this activity. (Wat. Code, § 13264, Dredge or Fill Procedures, Section IV.A.2.d.)

- c. When no longer needed, all construction-related equipment, materials, and temporary BMPs shall be removed from Project sites.

The longer equipment and other unneeded materials are left on a project site the higher the likelihood of a leak, spill, or other unintended impact. Removing these

materials as soon as they are no longer needed is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

- d. All imported riprap, rocks, and gravels that are used shall be pre-washed.

Imported rock materials have the potential to harbor unwanted and detrimental invasive species, pathogens, sediments, compounds, etc. Requiring these materials to be washed before being brought to, and used on, site is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

4. Toxic and Hazardous Materials

- a. Prior to use in waters of the state, all equipment shall be cleaned of any substances that are detrimental to water quality.

Equipment can harbor the same detrimental substances as the rock materials noted above. Motorized equipment can also introduce petroleum products and other compounds into waters. Requiring that equipment be cleaned of these detrimental substances before being used in waters is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

- b. Operation and storage of vehicles and equipment shall not result in a discharge or threatened discharge of oil, grease, other petroleum products, or any other waste that may be detrimental to the quality of waters of the state.

Petroleum products and other waste materials that may leak, leach, or fall from equipment may be detrimental to water quality. This condition protects water quality by ensuring that these materials are not discharged to waters of the state when equipment is being used or stored. (Dredge or Fill Procedures, Section IV.B.1.)

- c. Vehicles and equipment that operate in waters of the state shall be regularly inspected for leaks. At no time shall the Permittee allow the use of any vehicle or equipment that leaks any substance possibly detrimental to water quality.

Fluids that leak from vehicles and equipment are generally detrimental to water quality. This condition protects water quality by requiring regular inspections of vehicles and equipment and restricting use of leaking vehicles and equipment. (Dredge or Fill Procedures, Section IV.B.1.)

- d. Raw cement, concrete (or washing thereof), asphalt, drilling fluids, lubricants, paints, coating material, oil, petroleum products, or any other substances which could be hazardous resulting from or disturbed by project-related activities, shall be prevented from contaminating fill material and/or entering waters of the state.

The materials listed above are detrimental to water quality. These materials can either be directly or indirectly, or chronically or acutely toxic to aquatic organisms and are generally detrimental to water quality through alteration of water chemistry (pH, dissolved oxygen, specific conductance, organic enrichment,

dissolved and particulate metals, fine sediment, etc). This condition protects water quality by restricting these compounds from being discharged into waters of the state. (Dredge or Fill Procedures, Section IV.B.1.)

- e. Equipment working in waters of the state, including in areas protected by diversions, shall be removed from the delineated waters for fueling, service, or maintenance whenever feasible. When use of stationary equipment that requires refueling or service in delineated waters is planned, BMPs for managing the additional risk posed by that refueling and service shall be implemented. Such BMPs should include any precautions as necessary to ensure potential spills and leaks do not result in a discharge into waters of the state.

Fuels and other petroleum products are detrimental to water quality. This condition protects water quality by requiring equipment to be removed from waters before fueling, or, if that is not possible, for special procedures to be developed to mitigate the risk of fueling equipment in waters. (Dredge or Fill Procedures, Section IV.B.1.)

- f. On-site containment for storage of chemicals classified as hazardous shall include secondary containment.

Hazardous materials are detrimental to water quality. Secondary containment around hazardous material storage sites helps to ensure that any leaks or spills of such materials do not result in a discharge to waters of the state. (Dredge or Fill Procedures, Section IV.B.1.)

5. Invasive Species and Soil Borne Pathogens

- a. Imported fill and planting materials must be free of pathogens that could harm local plant or animal populations.

Invasive species can be detrimental to water quality by outcompeting native species, altering soil/water chemistry, causing channel downcutting, lowering groundwater levels, altering allochthonous inputs, altering shading, reducing habitat for native fauna, etc. This condition protects water quality by requiring that the Project does not introduce invasive species into individual project areas. (Dredge or Fill Procedures, Section IV.B.1.)

- b. Imported fill material must be free of weed and invasive species' seeds and live plants.

Invasive species can be detrimental to water quality by outcompeting native species, altering soil/water chemistry, causing channel downcutting, lowering groundwater levels, altering allochthonous inputs, altering shading, reducing habitat for native fauna, etc. This condition protects water quality by requiring that the Project does not introduce invasive species into individual project areas. (Dredge or Fill Procedures, Section IV.B.1.)

- c. Equipment and machinery used in Project construction shall be inspected and cleaned of non-native invasive vegetation prior to use at an individual project site.
Invasive species can be detrimental to water quality by outcompeting native species, altering soil/water chemistry, causing channel downcutting, lowering groundwater levels, altering allochthonous inputs, altering shading, reducing habitat for native fauna, etc. This condition protects water quality by requiring that the Project does not introduce invasive species into individual project areas. (Dredge or Fill Procedures, Section IV.B.1.)

6. Roads

- a. Existing roads shall be used to access Project sites when practicable.
Unpaved roads are a source of excess sediment delivery to streams throughout California. New roads need not be constructed if existing roads can be used. This condition protects water quality by limiting new sources of excess sediment. (Dredge or Fill Procedures, Section IV.B.1.)
- b. All existing roads used for the Project shall be left in a condition equal to or better than their condition prior to Project use.
Unpaved roads are a source of excess sediment delivery to streams throughout California. If these roads are properly designed and maintained their impact to water quality can be minimized. These roads often fall into disrepair because due to lack of maintenance or repair. This condition protects water quality by requiring that roads used for this Project are, at the very least, left in the condition that they were in before the Project used them. (Dredge or Fill Procedures, Section IV.B.1.)
- c. Where use of existing roads is not practicable, temporary access routes shall be designed and constructed such that they do not cause a discharge of sediment or other wastes to waters of the state.
Unpaved roads are a source of excess sediment delivery to streams throughout California. This condition protects water quality by requiring necessary new roads to be designed and constructed such that they do not discharge excess sediment or other wastes to waters. (Dredge or Fill Procedures, Section IV.B.1.)
- d. Construction of new temporary access roads shall be limited to the minimum number and width necessary to complete the Project.
Unpaved roads are a source of excess sediment delivery to streams throughout California. This condition protects water quality by limiting new sources of excess sediment and other wastes. (Dredge or Fill Procedures, Section IV.B.1.)

7. Stormwater: If the Project is required to obtain coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002) (Construction General Permit), the Permittee shall comply with the requirements in the Construction General Permit. Generally, coverage under the Construction General Permit is required for construction activity resulting in a land disturbance of one acre or more, or less than one acre but is part of a larger common plan of development or sale that results in a land disturbance of one acre or more. Covered activities are described with additional detail in the Construction General Permit. Compliance with the Construction General Permit constitutes compliance with Erosion and Sediment Control Conditions 18.a.i-ii and Stormwater Management Conditions 18.b.i-ii, below.

If the Project is not required to obtain coverage under the Construction General Permit, Project plans shall include the appropriate erosion and sediment control and stormwater management conditions described below.

a. Erosion and Sediment Control

- i. No later than 24 hours prior to the start of a likely rain event, the Permittee shall ensure that disturbed areas that drain to waters of the state are protected with correctly installed erosion control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw, etc.) or revegetated with propagules (seeds, cuttings, divisions) of locally collected native plants. The likely rain event is defined as any weather pattern that is forecast to have a 50 percent or greater probability of producing precipitation in the project area. The Permittee shall obtain daily a printed copy of the precipitation forecast information (and keep for record) from the National Weather Service Forecast Office.
- ii. The timing for installation of the post-construction stormwater BMP subdrains, soils, mulch, and plants shall be scheduled to ensure that the installed bioretention areas do not receive runoff from exposed or disturbed areas that have not been landscaped. The constructed post-project stormwater BMPs shall not receive site runoff until all project landscaping is planted, and effective erosion control measures implemented to ensure that the stormwater features are protected from sediment accumulation.

b. Stormwater Management

- i. Disturbed areas must be temporarily stabilized to prevent erosion and accidental discharge into waters of the state no later than 24 hours prior to any likely precipitation event. A likely precipitation event is any weather pattern that is forecast to have a 50 percent probability of producing precipitation in the project area, as predicted by the National Weather Service. If commencement of a precipitation event is predicted to begin

less than 24 hours after the forecast is issued, temporary stabilization of the disturbed in-water work areas must begin immediately.

- ii. No individual construction activity that could discharge sediment or other pollutants may be initiated if that activity and its associated erosion control measures cannot be completed prior to the onset of precipitation. After any rain event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sedimentation problems and take corrective action as needed. Seventy-two-hour weather forecasts from the National Weather Service shall be consulted prior to start-up of any phase of the project that may result in sediment-laden runoff to the project site, and construction plans made to meet this condition.

Disturbed areas could discharge excess sediment to waters, which will degrade water quality. Disturbed areas within waters are at risk of creating channel instability that will lead to long term erosion, channel incision, sedimentation, floodplain abandonment, water quality degradation, alteration of local groundwater levels, and aquatic habitat degradation. These conditions protect water quality by requiring that in water work areas are stabilized prior to the onset of rainfall events. (Dredge or Fill Procedures, Section IV.B.1.)

H. Mitigation for Temporary Impacts

1. The Permittee shall restore all areas of temporary impacts to waters of the state and all Project site upland areas of temporary disturbance which could result in a discharge to waters of the state in accordance with the MMRP and the individual project specifications which were submitted as part of the application and incorporated herein by reference.

Temporarily impacted areas that are not restored could become permanently impacted and contribute to long-term degradation of water quality. This condition protects water quality by requiring temporarily impacted areas to be restored. (Dredge or Fill Procedures, Sections IV.A.2.d, IV.B.1.)

2. Under the preapproved mitigation program in the OCTA M2 Natural Community Conservation Plan/Habitat Conservation Plan, project-related impacts to 0.003 acre of wetlands and 0.014 acre of non-wetland waters of the state (i.e., 0.017-acre total) for this project would be mitigated through restoration and monitoring in Aliso Creek. Under the terms of the agreement, the mitigation sites would need to be prepared and planted and restoration monitoring would need to commence before any fill material could be discharged into waters of the state.

Temporarily impacted areas that are not restored could become permanently impacted and contribute to long-term degradation of water quality. This condition protects water quality by ensuring that restoration of temporarily impacted areas is completed in a manner consistent with this certification. (Dredge or Fill Procedures, Sections IV.A.2.d, IV.B.4-5.)

3. To avoid erosion and invasive plant colonization, temporary impacts to concrete covered or paved areas that are to remain in a hardened state will be repaired in a timely manner so that unprotected bare soil will not remain exposed.

Temporarily impacted areas that are not restored could become permanently impacted and contribute to long-term degradation of water quality. The longer the lag time between impact and restoration, the more opportunity there is for water quality degradation. This condition protects water quality by ensuring that restoration is initiated in a reasonable amount of time after impacts have occurred. (Dredge or Fill Procedures, Sections IV.A.2.d, IV.B.4-5.)

4. For impacts to unpaved, earthen areas within or adjacent to waters of the state, restoration methods and materials shall be described in a restoration plan. The restoration plan shall be submitted for written acceptance by State Water Board staff within 180 days of issuance of this Order, unless an extension is requested by the Permittee and approved by State Water Board staff. The restoration plan shall provide the following: a schedule; plans for grading of disturbed areas to pre-project contours; planting palette with plant species native to the Project area; seed collection location; invasive species management; performance standards; maintenance requirements (e.g. watering, weeding, and replanting) and a monitoring plan.

Meeting performance measures is required to protect water quality. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

5. The State Water Board may extend the monitoring period beyond requirements of the restoration plan upon a determination by State Water Board Executive Director that the performance standards have not been met or are not likely to be met within the monitoring period.

Meeting performance measures is required to protect water quality. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

I. Compensatory Mitigation for Permanent Impacts:

Compensatory mitigation is required for the permanent physical loss of waters of the state listed in Table 3.

All of the conditions related to mitigation requirements in section XI.I of this Order are required by the Dredge or Fill Procedures, section IV.A.2.b. In addition, section IV.B.1.a of the Procedures require that the Water Boards will approve a project only after it has been determined that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or minimized. Compensatory mitigation requirements are also authorized by Water Code, section 13263, which requires the imposition of requirements that implement water quality control plans, takes into consideration the beneficial uses to be protected, and the need to prevent nuisance.

1. Final Compensatory Mitigation Plan:

The Permittee shall provide compensatory mitigation for impacts to waters of the state in accordance with OCTA M2 Natural Community Conservation Plan/Habitat Conservation Plan incorporated herein by reference and approved through the issuance of this Order. Any deviations from, or revisions to, the Compensatory Mitigation Plan must be pre-approved by Water Board staff.

2. Permittee-Responsible Compensatory Mitigation Responsibility

- a. Permittee responsible compensatory mitigation installation was completed in advance of authorized impacts.
- b. The Permittee is responsible for the required compensatory mitigation in perpetuity. However, the Permittee may transfer the compensatory mitigation requirements associated with long-term management when the following conditions have been met:
 - i. Performance standards are met.
 - ii. A Transfer Agreement to a third party has been approved by Water Board staff.
 - iii. An endowment fund has been provided by the Permittee to a third party for management in perpetuity of the mitigation site.
 - iv. A conservation easement, deed restriction, or other appropriate restrictive covenant for the mitigation site has been recorded and approved by Water Board staff.
- c. Transfer of Long-Term Permittee-Responsible Compensatory Mitigation and Management Responsibility
 - i. A transfer agreement shall be submitted from an authorized representative of the new party (transferee) for acceptance by Water Board staff. This agreement shall demonstrate acceptance and understanding of the responsibility to comply with and fully satisfy the required compensatory mitigation and long-term management conditions. Failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the Water Board under Water Code section 13385, subdivision (a).
 - ii. Notification of transfer of responsibilities meeting the above condition must be provided to the Water Board staff. A draft transfer agreement is due to Water Board staff no less than thirty (30) days prior to the transfer of the mitigation responsibility. A final transfer agreement is due to Water Board staff within 30 days of the completion of the transfer.

3. Total Required Compensatory Mitigation

- a. The Permittee is required to provide compensatory mitigation for the authorized impact Under the preapproved mitigation program in the OCTA M2 Natural

Community Conservation Plan/Habitat Conservation Plan, permanent project-related impacts to 0.003 acre of wetlands and 0.014 acre of non-wetland waters of the state (i.e., 0.017-acre total) for this project would be mitigated through restoration and monitoring in Aliso Creek. Under the terms of the agreement, the mitigation sites would need to be prepared and planted and restoration monitoring would need to commence before any fill material could be discharged into Water of the US.

- b. Total required Project compensatory mitigation information for permanent physical loss of area is summarized in Table 3. [Establishment (Est.), Re-establishment (Re-est.), Rehabilitation (Reh.), Enhancement (Enh.), Preservation (Pres.), Unknown].
- c. The Permittee is required to provide compensatory mitigation for the ecological degradation to streams and wetlands, by allocation of mitigation capacity at the Aliso Creek Mitigation Site.
- d. Total required Project compensatory mitigation information for permanent degradation of ecological condition and temporal loss is summarized in Table 4.

Table 3: Total Required Project Compensatory Mitigation Quantity for Permanent Physical Loss of Area

Aquatic Resource Type	Mitigation Type	Units	Est.	Re-est.	Reh.	Enh.	Pres.	Unknown
Wetland	Permittee-Responsible	Acres			0.003			
Stream Channel	Permittee-Responsible	Acres			0.014			

Table 4: Total Required Project Compensatory Mitigation Quantity for Permanent Degradation of Ecological Condition and Temporal Loss

Aquatic Resource Type	Mitigation Type	Units	Est.	Re-est.	Reh.	Enh.	Pres.	Unknown
Stream Channel	Permittee-Responsible	Acres			0.092			

XII. Public Notice

The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from June 28, 2022, to July 19, 2022. The State Water Board did not receive any comments during the comment period. Public notice regarding the Initial Study/Mitigated Negative Declaration is described in Attachment C, CEQA Findings of Fact.

XIII. California Environmental Quality Act (CEQA)

On June 24, 2020, California Department of Transportation, District 12, as lead agency, adopted an initial study/mitigated negative declaration (IS/MND) (State Clearinghouse (SCH) No. 2018111042) for the Project and filed a Notice of Determination (NOD) at the SCH on July 8, 2021. Pursuant to CEQA, the Water Board has made Findings of Facts (Findings) which support the issuance of this Order and are included in Attachment C.

This Order adopts an initial study/mitigated negative declaration (IS/MND) (State Clearinghouse (SCH) No. 2018111042) and approves the mitigation monitoring and reporting program (MMRP) for the Project. Pursuant to CEQA, the Water Board has made Findings of Facts (Findings) which support the issuance of this Order and are included in Attachment C.

XIV. Petitions for Reconsideration

Any person aggrieved by this action may petition the Water Board to reconsider this Order in accordance with California Code of Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within 30 calendar days of the issuance of this Order.

XV. Fees Received

A fee of \$2,801.00 was received on April 20, 2022. The fee amount was determined as required by California Code of Regulations, Title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as Category A - Fill & Excavation Discharges (Fee Code 84) with the dredge and fill fee calculator.

XVI. Conclusion

I hereby issue the Order for the State Route 91 Improvement Project between State Route 57 and State Route 55 (OCTA M2 "Project I"), Segment 1 (Project), [SB22038IN], certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

This discharge is also regulated pursuant to Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Order to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Water Code, section 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this Order and the attachments to this Order; and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, the Regional Water Boards' Water Quality Control Plans and Policies.

Date

Karen Mogus
Deputy Director
Division of Water Quality